

EXHIBIT A

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7 UNITED STATES DISTRICT COURT
8 FOR THE CENTRAL DISTRICT OF CALIFORNIA

9 ANDREW PERRONG, individually
10 and on behalf of all others similarly
11 situated,

12 Plaintiff,

13 v.

14 AUTO ARMOR SPECIALIST LLC,

15 Defendant.
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Case No.

COMPLAINT FOR:

1. VIOLATIONS OF THE
TELEPHONE CONSUMER
PROTECTION ACT, 47 U.S.C.
§ 227(c)

Class Action

DEMAND FOR JURY TRIAL

COMPLAINT

Perrong v. Auto Armor Specialist LLC

1 Plaintiff Andrew Perrong (hereinafter referred to as “Plaintiff”), individually
2 and on behalf of all others similarly situated, alleges on personal knowledge,
3 investigation of his counsel, and on information and belief, as follows:
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6 **NATURE OF ACTION**

7 1. As the Supreme Court recently explained, “Americans passionately
8 disagree about many things. But they are largely united in their disdain for
9 robocalls. The Federal Government receives a staggering number of complaints
10 about robocalls—3.7 million complaints in 2019 alone. The States likewise field a
11 constant barrage of complaints. For nearly 30 years, the people’s representatives in
12 Congress have been fighting back. As relevant here, the Telephone Consumer
13 Protection Act of 1991, known as the TCPA, generally prohibits robocalls to cell
14 phones and home phones.” *Barr v. Am. Ass’n of Political Consultants*, 140 S. Ct.
15 2335, 2343 (2020).
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19 2. This case involves a campaign on behalf of Auto Armor Specialist
20 LLC (“AAS”) to market its services through the use of automated telemarketing
21 calls in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et*
22 *seq.* (hereinafter referred to as the “TCPA”).
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25 3. The recipients of AAS’s illegal calls, which include Plaintiff and the
26 proposed class, are entitled to damages under the TCPA and because the
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1 technology used on behalf of AAS makes calls *en masse*, the appropriate vehicle
2 for their recovery is a class action lawsuit.

3
4 **PARTIES**

5 4. Plaintiff Andrew Perrong is a resident of Pennsylvania.

6 5. Defendant Auto Armor Specialist LLC is a California corporation
7
8 headquartered in this District.

9 **JURISDICTION AND VENUE**

10 6. This Court has federal question jurisdiction pursuant to 28 U.S.C. §
11
12 1331 and 47 U.S.C. § 227 *et seq.*

13 7. This Court has personal jurisdiction over AAS because the company
14
15 is incorporated in California and resides in this District.

16 8. Venue is proper pursuant to 28 U.S.C. § 1391(b) because the
17
18 Defendant resides in and directed the calls to Plaintiff from this District.

19 **TCPA BACKGROUND**

20 **The National Do Not Call Registry**

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22 9. The National Do Not Call Registry allows consumers to register their
23
24 telephone numbers and thereby indicate their desire not to receive telephone
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26 solicitations at those numbers. *See* 47 C.F.R. § 64.1200(c)(2).
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1 10. A listing on the Registry “must be honored indefinitely, or until the
2 registration is cancelled by the consumer or the telephone number is removed by
3 the database administrator.” *Id.*

4
5 11. The TCPA and implementing regulations prohibit the initiation of
6 telephone solicitations to residential telephone subscribers to the Registry and
7 provides a private right of action against any entity that makes those calls, or “on
8 whose behalf” such calls are promoted. 47 U.S.C. § 227(c)(5); 47 C.F.R.
9 § 64.1200(c)(2).
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12 **FACTUAL ALLEGATIONS**

13 12. Defendant AAS is a “person” as the term is defined by 47 U.S.C. §
14 153(39).
15

16 13. Plaintiff Perrong’s telephone number, (215)-322-XXXX has been
17 registered with the National Do Not Call Registry since November 12, 2018.
18

19 14. The Plaintiff received telemarketing calls on behalf of AAS, at a
20 minimum, once on each of August 20, 25, and 30, and twice on each of September
21 1 and 2.
22

23 15. All of these calls began with dead air.

24 16. During at least four of the calls an agent never joined the line.

25 17. During the August 25 call, the caller promoted an extended warranty
26 plan, but the call was hung up before Plaintiff could identify the caller.
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COMPLAINT

Perrong v. Auto Armor Specialist LLC

1 18. During the second call on September 2, the Plaintiff engaged the
2 caller and was sold an Auto Armor Specialist extended warranty plan.

3 19. The Plaintiff was provided a callback number for Auto Armor
4 Specialist during the call.

5 20. Plaintiff did not provide his consent to receive the telemarketing calls
6 at issue and did not have a prior business relationship with AAS.

7 21. The calls were not necessitated by an emergency.

8 22. Plaintiff and all members of the Class, defined below, have been
9 harmed by the acts of Defendant because their privacy has been violated, they were
10 annoyed and harassed, and, in some instances, they were charged for incoming
11 calls.

12 **AAS's Liability for Its Agents' Conduct**

13 23. For more than twenty years, the FCC has explained that its “rules
14 generally establish that the party on whose behalf a solicitation is made bears
15 ultimate responsibility for any violations.” *In re Rules & Regulations Implementing*
16 *the TCPA*, CC Docket No. 92-90, Memorandum Opinion and Order, 10 FCC Rcd
17 12391, 12397 (¶ 13) (1995).

18 24. In its January 4, 2008 ruling, the FCC likewise held that a company
19 on whose behalf a telephone call is made bears the responsibility for any
20 violations. *Id.* (specifically recognizing “on behalf of” liability in the context of an
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1 autodialed or prerecorded message call sent to a consumer by a third party on
2 another entity's behalf under 47 U.S.C. § 227(b)).

3
4 25. In fact, the Federal Communication Commission has instructed that
5 sellers such as AAS may not avoid liability by outsourcing telemarketing to third
6 parties, such as their agents:
7

8 [A]llowing the seller to avoid potential liability by outsourcing its
9 telemarketing activities to unsupervised third parties would leave
10 consumers in many cases without an effective remedy for telemarketing
11 intrusions. This would particularly be so if the telemarketers were
12 judgment proof, unidentifiable, or located outside the United States, as
13 is often the case. Even where third-party telemarketers are identifiable,
14 solvent, and amenable to judgment limiting liability to the telemarketer
15 that physically places the call would make enforcement in many cases
16 substantially more expensive and less efficient, since consumers (or law
17 enforcement agencies) would be required to sue each marketer
separately in order to obtain effective relief. As the FTC noted, because
“[s]ellers may have thousands of ‘independent’ marketers, suing one or
a few of them is unlikely to make a substantive difference for consumer
privacy.”

18 *May 2013 FCC Ruling*, 28 FCC Rcd at 6588 (¶ 37) (internal citations omitted).

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20 26. On May 9, 2013, the FCC released a Declaratory Ruling holding that
21 a corporation or other entity that contracts out its telephone marketing “may be
22 held vicariously liable under federal common law principles of agency for
23 violations of either section 227(b) or section 227(c) that are committed by third-
24 party telemarketers.”¹
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28 ¹ *In re Joint Petition Filed by DISH Network, LLC et al. for Declaratory Ruling Concerning
the TCPA Rules*, 28 FCC Rcd 6574, 6574 (¶ 1) (2013) (“May 2013 FCC Ruling”).

1 27. AAS is liable for its agents because they control the manner and
2 means of its telemarketing methods by:

- 3 a) acquiescing to their business mode of using a call center;
4 b) advising them that they could use third parties to assist in the
5 telemarketing;
6 c) instructing them on the geographic regions they can make calls
7 into;
8 d) providing qualifications for potential clients to be sent to AAS;
9 e) providing them pricing and other information to supply during
10 the calls to promote AAS's extended warranty plans; and
11 f) allowing agents to bind AAS to extended warranty plans.

12 28. AAS knew (or reasonably should have known) that the call center
13 agents that initiated the calls to the Plaintiff were violating the TCPA on its behalf
14 and failed to take effective steps within its power to force the telemarketer to cease
15 that conduct.

16 29. Any reasonable seller that accepts telemarketing call leads from
17 agents engaged in telemarketing would, and indeed must, investigate to ensure that
18 those calls were made in compliance with TCPA rules and regulations.

19 30. Finally, the May 2013 FCC Ruling states that called parties may
20 obtain "evidence of these kinds of relationships . . . through discovery, if they are
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1 not independently privy to such information.” *Id.* at 6592-593 (¶ 46). Evidence of
2 circumstances pointing to apparent authority on behalf of the telemarketer “should
3 be sufficient to place upon the seller the burden of demonstrating that a reasonable
4 consumer would not sensibly assume that the telemarketer was acting as the
5 seller’s authorized agent.” *Id.* at 6593 (¶ 46).
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8 CLASS ACTION ALLEGATIONS

9 31. Plaintiff brings this action on behalf of himself and the following class
10 (the “Class”) pursuant to Federal Rule of Civil Procedure 23.
11

12 32. Plaintiff proposes the following Class definition, subject to
13 amendment as appropriate:
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15 **Do Not Call Class:** All persons within the United States: (1) to whose
16 telephone number registered with the National Do Not Call Registry for at
17 least thirty days at the time of each call (2) an agent acting on behalf of
18 Defendant placed more than one telemarketing call within a 12-month
period (3) within the four years prior to the filing of the Complaint.

19 33. Plaintiff Perrong is a member of and will fairly and adequately
20 represent and protect the interests of this Class as he has no interests that conflict
21 with any of the class members.
22

23 34. Excluded from the Class are counsel, the Defendant, and any entities
24 in which the Defendant has a controlling interest, the Defendant’s agents and
25 employees, any judge to whom this action is assigned, and any member of such
26 judge’s staff and immediate family.
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1 35. Plaintiff and all members of the Class have been harmed by the acts of
2 the Defendant, including, but not limited to, the invasion of their privacy, annoyance,
3 waste of time, charges for the calls, the use of their telephone power and network
4 bandwidth, and the intrusion on their telephone that occupied it from receiving
5 legitimate communications.
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8 36. This Class Action Complaint seeks injunctive relief and money
9 damages.
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11 37. The Class's members as defined above are identifiable through the
12 Defendant's dialer records, other phone records, and phone number databases.
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14 38. Plaintiff does not know the exact number of members in the Class, but
15 Plaintiff reasonably believes the Class's members number, at minimum, in the
16 hundreds.
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18 39. The joinder of all members of the Class is impracticable due to the size
19 and relatively modest value of each individual claim.
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21 40. Additionally, the disposition of the claims in a class action will provide
22 substantial benefit to the parties and the Court in avoiding a multiplicity of identical
23 suits.
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25 41. There are numerous questions of law and fact common to Plaintiff and
26 to the proposed Class, including but not limited to the following:
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- 28 (a) whether Defendant's agents made calls without first obtaining
prior express written consent to make the calls;

(b) whether Defendant's agents systematically made telemarketing calls to telephone numbers registered with the National Do Not Call Registry;

(c) whether Defendant's agents' conduct constitutes a violation of the TCPA;

(d) whether Defendant is vicariously liable for its agents conduct; and

(e) whether members of the Class are entitled to treble damages based on the willfulness of Defendant's conduct.

42. Further, Plaintiff will fairly and adequately represent and protect the interests of the Class. Plaintiff has no interests which are antagonistic to any member of the Class.

43. Plaintiff has retained counsel with substantial experience in prosecuting complex litigation and class actions, and especially TCPA class actions. Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf of the other members of the Class and have the financial resources to do so.

44. Common questions of law and fact predominate over questions affecting only individual class members, and a class action is the superior method for fair and efficient adjudication of the controversy. The only individual question concerns identification of class members, which will be ascertainable from records maintained by Defendant and/or its agents.

1 45. The likelihood that individual members of the Class will prosecute
2 separate actions is remote due to the time and expense necessary to prosecute an
3 individual case.
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5 46. Plaintiff is not aware of any litigation concerning this controversy
6 already commenced by others who meet the criteria for class membership described
7 above.
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9 **FIRST CAUSE OF ACTION**
10 **Violation of the Telephone Consumer Protection Act**
11 **(47 U.S.C. 227(b)) on behalf of the Do Not Call Class**

12 47. Plaintiff incorporates the allegations from paragraphs 1-45 as if fully
13 set forth herein.
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15 48. Defendant violated the TCPA and the Regulations by making, or
16 having its agent make, two or more telemarketing automated calls within a 12-
17 month period on Defendant's behalf to Plaintiff and the members of the Class
18 while those persons' phone numbers were registered on the National Do Not Call
19 Registry.
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21 49. As a result of the Defendant's violations of 47 U.S.C. § 227 *et seq.*,
22 Plaintiff and Class members are entitled to an award of up to \$500 in statutory
23 damages for each and every violation of the statute, pursuant to 47 U.S.C. §
24 227(b)(3)(B).
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JURY DEMAND

Plaintiff requests a jury trial as to all claims of the complaint so triable.

Dated: September 3, 2021

By: /s/ Rachel E. Kaufman

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